

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 14

COUNTRYWAY PARTNERSHIP d/b/a
CROWN MOTORS¹

Employer

and

Case 14-RC-12430

INTERNATIONAL ASSOCIATION OF
MACHINISTS AND AEROSPACE WORKERS,
AFL-CIO

Petitioner

REGIONAL DIRECTOR'S DECISION AND
DIRECTION OF ELECTION

The Employer, Countryway Partnership d/b/a Crown Motors, is engaged in the retail sale of automobiles and related services at its dealership in Farmington, Missouri. The Petitioner, International Association of Machinists and Aerospace Workers, AFL-CIO, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a unit of all full-time and regular part-time service department journeymen and apprentice automotive technicians employed by the Employer at its Farmington, Missouri facility. A hearing officer of the Board held a hearing and the Employer filed a brief.

As evidenced at the hearing and in the brief, the parties disagree on two issues: (1) whether the unit limited to the service technicians is appropriate and (2) whether the service shop foreman is a supervisor within the meaning of the Act. The Petitioner contends that the petitioned-for unit is an appropriate craft unit and that the lube and oil technician should be included in the craft unit as an apprentice. The Employer contends that the only appropriate unit must include the entire service department as well as all employees in the body shop,

¹ The Employer's name appears as amended at hearing.

parts, and detail departments because these employees participate in the “vehicle repair process.” In the alternative, the Employer contends that if a craft unit encompassing service technicians exists, then that craft unit must also include body shop technicians and service advisors. The Employer also contends that the service shop foreman is a supervisor and should be excluded from the unit. The Petitioner contends that the shop foreman is not a supervisor and is appropriately included in the unit.

I have considered the evidence and the arguments presented by the parties on these issues. As discussed below, I have concluded that the service technicians are a distinct and homogeneous group of highly trained and skilled craftsmen constituting an appropriate unit both as a craft unit and based on their separate and distinct community of interest. I have also concluded that the lube and oil technician is properly included in this unit as a helper or trainee and that the shop foreman is not a supervisor and therefore also properly included in the unit. There are 11 employees in the unit sought by Petitioner, 27 employees in the unit sought by the Employer, and 11 employees in the unit found appropriate here.

I. THE EMPLOYER’S OPERATIONS

The Employer operates a Chrysler brand automotive dealership selling new and used automobiles. The Employer’s service department, body shop, parts department, and detail department prepare automobiles for sale and perform automotive repairs. The Employer’s sales department is responsible for automobile sales and the office employees handle related paperwork. The Employer employs a total of approximately 50 employees in these operations.

The overall operations of the Employer are the responsibility of its general manager, who also is the manager of the sales department. Reporting directly to the general manager are the office manager and the managers of the service, body shop, detail, and parts departments.²

The Employer’s facility is housed in a single 27,000 square foot building that contains all of the Employer’s departments. The Employer’s parts, service, body shop, and detail departments are located in areas throughout the building and are separated by walls and

windows. The parts department is in the front of the building opposite the sales showroom and separated from the showroom by a customer waiting area. The service department is behind the parts department and the body shop is behind the showroom. Behind the customer waiting area are administrative offices, storage areas, and the service office, which abuts the service department. Behind the administrative office, in order of location from front to rear, are the shop restrooms and break room, a storage area, and the detail department, which is located at the rear of the building between the body shop and service department.

All service, body shop, parts, and detail department employees are provided with the Employer's information packet containing various personnel policies and are subject to their provisions. The departmental managers, in conjunction with the general manager, establish wage rates. All of these employees receive the same health insurance and 401(k) benefits. All employees use the same lunchroom and restroom. All employees, except for the detailers, wear a uniform, which varies by department, although the body shop and service department technicians wear the same uniform. All departments operate Monday through Friday, 8 a.m. to 5 p.m., except for the detail department whose employees also work on Saturday. All employees record their time on computerized time clocks located throughout the building. The service department and body shop have their own time clocks.

A. THE SERVICE DEPARTMENT

The service department operates under the overall supervision of the service manager who directly supervises the shop foreman, two service advisors, nine technicians, the lube and oil technician, the porter, the warranty administrator, and the department secretary. The service department shop has a garage door at each end and service bays alongside each of the two walls that contain racks and tools.

Service technicians perform all levels of automotive diagnostic, maintenance and repair work. The Employer does not require its service technicians to possess special certifications before they are hired. All of the service technicians, however, are certified by the National

² The parties stipulated that these managers are supervisors within the meaning of the Act.

Institute for Automotive Service Excellence (“ASE”) in multiple areas of automotive repair. After hire, service technicians are required to attend training classes in various mechanical areas. Some classes are self-study and others are taken at the Chrysler Training Center. Chrysler certifies technicians on three ascending levels, bronze, silver, and gold, based on the type and amount of training as well as ASE certification. The shop foreman and all of the service technicians are gold certified by Chrysler. The lube and oil technician is not certified. Chrysler only reimburses the Employer for warranty service work performed by service technicians who are certified by Chrysler in the category of mechanical work required. Fifty-five percent of service department work is performed for customers paying directly while the remaining forty five percent of the work performed is warranty service work.

Service technicians are required to supply their own tools. The Employer does not specify the tools that service technicians are required to possess, but they typically possess sufficient tools to perform their work. Service technicians’ personal tools can be valued as much as \$35,000 to \$40,000. Technicians supply their own sockets, wrenches, hammers, screwdrivers, wrenches, pliers, etc. While service technicians may own their own specialty tools, the Employer provides specialty tools and major diagnostic and measuring tools. Technicians’ personal tools are kept near their regularly assigned stall. The Employer maintains numerous specialty tools used to diagnose and repair mechanical problems, including two Mopar Diagnostic Systems (“MDS”), DRB III, brake lathe, transmission flush machine, coolant flush machine, strut compression machine, and differential flush machine. The MDS are located on each side of the shop and are used exclusively by the service department to provide diagnostic and technical information. The DRB III, a hand-held diagnostic tool, is also used exclusively by the service department. An alignment rack is also in the shop and a tire machine and brake lathe are located at the west end of the shop. Specialty tools are also kept in the storage area between the service department and body shop.

The Employer does not have a formal apprenticeship program for service technicians. However, a year and one-half ago an experienced, but uncertified, mechanic was hired as the

lube and oil technician and held that position for a month before being promoted to service technician. The Employer subsequently paid for him to become ASE and Chrysler certified. The current lube and oil technician has 7 years of limited mechanical experience and is scheduled to take the ASE exams for engine repair, steering and suspension, electrical, and brakes. The Employer will pay for those exams and, after he is certified, will pay for Chrysler training as a service technician. The lube and oil technician currently spends approximately 90 percent of his time performing oil and lube jobs. In addition to oil changes, the lube and oil technician changes belts and hoses, flushes transmissions, flushes coolant, rotates tires, and has performed limited mechanical work such as changing an axle seal, replacing grease seals, replacing brakes, calipers and machining rotors. While the lube and oil technician uses some of the same specialty tools used by service technicians, he does not use any of the diagnostic equipment. When the lube technician is not present, the service technicians fill in for the lube technician. When the lube technician falls behind, which can happen two or three times per day, the service technicians assist him.

Service technicians are paid on a flat rate, i.e. their wages are determined by multiplying their assigned hourly rate by the number of hours allocated to the particular job they are working on, as set out in the Chrysler or Chilton flat-rate handbook. Their assigned hourly rate ranges from \$15 to \$20 per hour. The lube and oil technician's assigned rate is \$10 per hour. Service technicians average between 13 and 50 hours of "flag time" per week.

The service technicians are assigned to one of the two service advisors, who are responsible for the assignment of work to their service technicians. The service advisors meet with the customer and prepare a repair order that they assign to a service technician. The service advisor communicates with the service technician about the needed repairs and the parts department regarding the availability of parts. The service advisor discusses the needed repairs with the customer and secures authorization to make the repairs. The service advisors receive a salary plus commission and perform no mechanical work. The service advisors work out of the service office located adjacent to the shop. The service advisors also take training

courses and are certified by Chrysler in areas related to their work as advisors, not as mechanics.

The warranty administrator is responsible for compiling all warranty work and ensuring that the warranty paperwork is prepared correctly. The warranty administrator fills in for an absent service advisor approximately 20 to 30 percent of the time. The warranty administrator must take classes and be certified by Chrysler; her certification coursework differs from the typical coursework of the service technicians. The service department secretary compiles and files all repair orders after they have been completed by the service technicians and the service advisors. Both of these employees work in the same office as the service advisors, are hourly paid, and perform no mechanical work.

The porter cleans the service department and drives customers to and from home. The porter is paid an hourly wage. Occasionally, the porter will give the service technicians a “hand” if they need an extra one. The porter performs no mechanical work.

B. THE BODY SHOP

The body shop operates under the overall supervision of the body shop manager who directly supervises a porter, a secretary, and four body shop technicians, including one technician referred to as a journeyman, and one intern. The body shop technicians repair body damage on vehicles. They usually work on vehicles that have been in accidents, they rarely perform warranty work. They perform sheet metal work, repair dents, paint, and straighten frames. They use special tools like sanders, grinders, air saws, frame pullers, and paint guns to perform such work. These tools are located in the body shop and are not used by service technicians.

The body shop technicians are not certified by Chrysler, although they receive substantial training and certification provided by various other entities, such as paint companies and other entities in the collision repair industry. Except for the journeyman, the body shop technicians do not have any mechanical training or certification. The journeyman body shop technician is an experienced mechanic, having worked for years as a mechanic for other

employers prior to his hire by the Employer. The journeyman holds ASE certification in the transmission, drive train, and transaxle and has taken 20 courses in the area of automotive technology and mechanical systems. He is not certified as a mechanic by Chrysler. The general manager testified that the journeyman body shop technician spends approximately 50 percent of his time performing mechanical repairs similar to those performed by service technicians, except that he performs no diagnostic work, rather, he replaces damaged mechanical parts as well as the damaged body parts, to effect the complete repair of the vehicle. The record is unclear as to what, if any, mechanical work the other body shop technicians perform. The body shop technicians do not perform any mechanical repair work that comes to the Employer through the service department, including service warranty work. Mechanical experience is not a requirement for any body shop position and frequently the damaged vehicle is sent to the service department for mechanical work. The record does not reflect what factors determine whether the journeyman or the service department performs the mechanical work incidental to the collision repair.

The body shop technicians are required to provide their own tools. About 80 percent of their tools are the same type of basic tools utilized by the service shop technicians, e.g. wrenches, sockets, hammers, screwdrivers, pliers, flashlights, etc. The body shop technicians are paid an hourly flat rate that is approximately 15 to 20 percent above the rate paid to service technicians.

The body shop porter cleans the body shop and details automobiles in preparation for delivery and performs some entry level body work. The body shop secretary compiles paperwork related to body shop repairs and performs a great deal of work related to insurance coverage for damaged automobiles. The porter and secretary are hourly paid.

C. THE PARTS AND DETAIL DEPARTMENTS

The parts department operates under the overall supervision of the parts department manager who supervises the counterperson and a parts driver. The counterperson assists the Employer's technicians and walk-up customers with automotive parts and supplies. The

counterperson has regular daily contact with service and body technicians who get their parts from the parts counter. The counterperson must be at least bronze certified. There is no evidence that the counterperson is certified in any mechanical or auto body courses. The parts driver picks up and delivers automobile parts. The counterperson and driver are hourly paid.

The detail department operates under the overall supervision of the detail department manager who directly supervises four detailers. The detailers clean automobiles in preparation for delivery to customers. Sometimes the detailers will clean parts for technicians. The detailers are hourly paid.

II. THE SCOPE OF THE UNIT

The Employer contends that the petitioned-for craft unit is not appropriate and that the unit should include all non-supervisory employees in the service department, body shop, parts, and detail departments. Although the employees in these departments clearly share some terms and conditions of employment and may constitute an appropriate unit, the Board has substantial discretion when it selects an appropriate bargaining unit. There is nothing in the statute which requires that the unit for bargaining be the *only* appropriate unit, or the *ultimate* unit, or the *most* appropriate unit; the Act requires only that the unit be “appropriate.” *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). Furthermore, a union is not required to seek representation in the most comprehensive grouping of employees unless “an appropriate unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963); *Bamberger’s Paramus, etc.* 151 NLRB 748, 751 (1965).

The Petitioner contends that the petitioned-for unit consisting of the service technicians is an appropriate craft unit. A craft unit is defined as:

. . . one consisting of a distinct and homogeneous group of skilled journeyman craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1997).

Also, with respect to a craft unit, the general rule is if there is no history of collective bargaining on a more comprehensive basis, a craft department group having a separate identity

of functions, skills, supervision, and exercising craft skills is generally an appropriate unit. *E.I. Du Pont de Nemours & Co.*, 162 NLRB 413 (1966). Here, there is no history of collective bargaining. In *Burns & Roe*, supra at 1308, the Board described the test for a craft unit:

In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits and cross-training.

In *Dodge City of Wauwatosa*, 282 NLRB 459 (1986) the Board stated that “mechanics possessing skills and training unique among other employees constitute a group of craft employees within an automotive...department, and therefore may, if requested, be represented in a separate unit, excluding other service department employees.” *Id.* at 460. I conclude that the service technicians, including the lube and oil technician, constitute a distinct and homogeneous group of skilled journeymen craftsmen and helpers such that they constitute an appropriate craft unit.

The service technicians all have extensive training as mechanics; they are ASE certified in multiple areas; and all possess the highest certifications offered by Chrysler. They perform skilled mechanical work and utilize specialized tools in the performance of this work. They have duties that are distinct from the duties of the other service department employees. The service technicians are the only employees in that department who perform mechanical work. Their duties require technical skills that are distinct from the skills utilized by the service advisors, the porter, the warranty administrator, or the secretary. Thus, the service technicians do not interchange with or perform the duties of any of these other service department employees. Nor do these employees perform any mechanical work. The only interchange in the service department occurs between the service technicians and the lube and oil technician. Service technicians perform lube and oil technician duties when the lube technician is absent or behind in his work. The lube and oil technician performs light mechanical duties, using the same tools

as the service technicians. Given the similarity in duties between the service technicians and the lube and oil technician and the regular interchange of duties, the lube and oil technician is a helper to the service technicians and appropriately included in the craft unit of service technicians found appropriate here. *Fletcher Jones Chevrolet*, 300 NLRB 875 (1990).

Although the employees in other departments may be involved in the “vehicle repair process,” the service technicians are the only employees exclusively engaged in mechanical work. Except for the body shop journeyman, the record does not establish that the other body shop technicians perform any mechanical work. The primary duties of the body shop technicians are to repair auto bodies rather than perform mechanical work. To the extent the body shop journeyman does perform mechanical work, it is not as a helper to the service technicians, but rather work that is incidental to his primary duties of automotive body repair work. There is no line of progression from the body shop to the service department nor is there any interchange or transfer between the body shop and the service department. Thus the body shop journeyman, despite his overlap in skills, could not be characterized as a helper or apprentice to the service technicians so that he must be included in the craft unit found appropriate here.

The service department is physically separated from the Employer’s other departments. The service department is separated from the detail and parts departments by a wall and separated from the body shop by the detail department, storage area, restrooms, and break areas that are located in between. Body shop technicians on occasion perform auto body repair work in the service department and service technicians will occasionally perform service work in the body shop, when it is more convenient not to move a disassembled vehicle to the service department. This happens less than 5 percent of the time. Employees from other departments generally do not perform their work in the service department shop.

Although both the service and body technicians are required to provide their own tools and the majority of these tools are the same, the service department does maintain specialized tools and equipment used exclusively for the diagnosis and repair of mechanical problems.

Only the body shop journeyman uses some of the same specialty equipment used in the service department. Despite the fact that the body shop journeyman performs mechanical work incidental to auto body repair and may use some of the specialty tools used by service technicians, there is no evidence the journeyman uses the MDS or DRB III, the specialty diagnosis equipment used regularly by all service technicians. The body shop maintains its own specialty tools and equipment to perform the full range of automotive body repair, including sanders, grinders, air saws, frame pullers, and paint guns. Service technicians do not utilize any of that equipment. Thus, both the service department and the body shop maintain separate specialty equipment used exclusively by their respective employees to serve the primary function of each department.

The lack of transfer and interchange between the Employer's departments supports the finding that service technicians do not share a community of interest with employees in other departments. There is no evidence of transfer between the service department and any other department. There is no evidence of day-to-day work-related contact between the service technicians and the body shop or detail department employees. While the service technicians share restrooms and a break room with employees from other departments, there is no evidence that the sharing of these facilities is anything more than convenient rather than work-related. There is no evidence of interchange between the service department and employees of any other department. In the limited instance that a body technician comes into the service department for work, he performs body work, not mechanical work, while there. In the limited instance that a service technician has performed work in the body shop, the work has been mechanical rather than body work.

The Employer's various departments have clear lines of demarcation between them. The departments are separately supervised and the Employer assigns work along departmental lines. Mechanical diagnostic and repair work is assigned to the service department and automotive body repair work is assigned to the body shop. The service technicians have only minimal work-related contact with the Employer's other employees, except for their contact with

the service advisors and the parts counterman. Many of the Employer's job classifications require post-hire certification so that the Employer may establish and maintain the dealerships' Chrysler star rating. These certifications are job specific. No other employees other than service technicians are certified as mechanics or take those courses. Nor do the service technicians attend the training courses required for the body shop, although there was testimony that any employee may take general courses in such areas as communication. Service technicians are paid a flat hourly rate and, other than the body technicians, the other employees the Employer proposes to include in the unit are paid a salary or are hourly paid. Body technicians earn approximately 20 percent more than service technicians.

Accordingly, for the reasons stated above, I find that the petitioned-for unit of service technicians, including the lube and oil technician, is an appropriate craft unit. *Dodge City of Wauwatosa*, supra; *Fletcher Jones Chevrolet*, supra. Moreover, I conclude that this craft unit need not include the service advisors and the body shop technicians as urged by the Employer. The service advisors do not engage in any mechanical work. The case relied upon by the Employer, *R.H. Peters Chevrolet*, 303 NLRB 791 (1991), is distinguishable. In *R.H. Peters*, the stipulated unit was not a craft unit; it included body shop and parts employees as well as mechanics. The Board simply decided that the challenged service advisors should be included in the unit based on their shared community of interest. Although the body shop technicians, notably the journeyman, do perform some mechanical work, that work is incidental to their primary duty of body repair, which requires different skills, expertise, and equipment. Moreover, the body shop technicians are separately supervised; work in separate areas; are paid on a separate scale; and do not transfer or interchange with the service technicians. Thus, this case is distinguishable from the case cited by the Employer, *Austin Ford, Inc.*, 136 NLRB 1398 (1962). In *Austin Ford*, the other employees performing limited mechanical work were within the same department as the mechanics, interchanged with them, and were considered for mechanic vacancies. Here the employees are in separate departments with separate supervision and no interchange, transfer, or line of progression between the departments.

III. SUPERVISORY STATUS OF THE SHOP FOREMAN

The Employer contends that the shop foreman should be excluded from the unit as a supervisor. The Employer contends that the shop foreman responsibly directs the service technicians; that he has the authority to assign work in that he can send employees home and redistribute work as the workload demands; that he has the authority to suspend, discharge, and discipline the service technicians; and the authority to recommend the hiring and firing of service technicians. In general, the Employer's direct evidence on the issue of supervisory status was obtained through leading questions, was very conclusional in nature, and was not supported by actual examples of the exercise of the alleged authority. Such testimony is entitled to little weight.

The shop foreman has been employed by the Employer for only 2 years, although he has 25 years of experience as a mechanic along with ASE and Chrysler Gold certification. The shop foreman was promoted to his current position in September 2002. Prior to his promotion, the position did not exist. The position was created in order to improve quality and service, i.e. fix the problem in the first visit to the shop, and thereby increase customer satisfaction. At the time of his promotion, the service department manager informed the service technicians of the job title and that the shop foreman would be his "right hand man."

The shop foreman spends approximately 80 percent of his time providing technical assistance to the service technicians both with diagnosis and actual repairs. Sometimes his assistance is required because the technician is having a problem and sometimes the job simply requires two mechanics, e.g. bleeding brakes. The shop foreman uses his tools on a daily basis to physically assist the technicians. The shop foreman also refers to the service manuals and test drives the vehicle with the service technicians if they are having difficulty finding the problem. If the problem requires a call to Chrysler's hotline, the shop foreman will make the call and relay the technical information or try to track the problem down. The shop foreman also spends time explaining repairs to customers, test driving vehicles with customers, and driving vehicles that have been repaired to ensure that the problem has been repaired. The

shop foreman does not drive every vehicle that has been repaired and the record does not reflect what factors determine whether or not the shop foreman will test drive a vehicle. He has also performed some repair work in emergency situations when other service technicians are not available.

The shop foreman is also authorized to approve certain Chrysler warranty repair orders. The Employer has a higher incident level than other dealerships in the area of warranty work for transmission, fuel system, and suspension repairs. As a result, Chrysler requires that either the shop foreman or the service manager sign the tickets for these repairs before Chrysler will pay for them. Thus, a notice has been posted that the shop foreman or service manager must sign these repair orders or else the service technicians will not be paid. The record does not reflect, however, what factors determine whether or not these orders are signed or if the shop foreman or service manager ever choose not to sign the repair orders. The shop foreman and the service manager each sign approximately 300 to 400 repair orders per month; these repairs comprise approximately 24 percent of the service department's work.

The Employer's service manager testified that the service technicians are expected to follow the shop foreman's directives and that they have been so informed. The record does not reflect in what manner all of the service technicians were so informed. However, shortly after his promotion, the shop foreman instructed a service technician to perform a compression test as part of an engine diagnosis. The service technician did not perform the test and, therefore, did not discover a hole in the piston. At some point after the incident, the shop foreman complained to the service manager because the incident "cost the shop a lot of money." The service manager then spoke privately to the service technician and told him that in the future he needed to do what the shop foreman told him to do. In another incident, a service technician left rather than help the shop foreman and other technicians push a truck out of a bay. The shop foreman again complained to the service manager. The service manager testified that he told the shop foreman that in the future he had the authority to send an employee home who

refused to follow instructions. The shop foreman does not recall ever being told that he had that authority and testified that he did not have that authority.

The service manager also testified generally that the shop foreman has the authority to discipline employees. The shop foreman denied ever having been told he has the authority to discipline employees and he has never disciplined an employee. The shop foreman testified that on one occasion he was upset with a service technician and complained to the service manager and told him that the technician should be disciplined. The service manager took no action against the employee.

The service manager also testified that the shop foreman is in charge of the shop in his absence. He testified that the shop foreman has the authority to send employees home for lack of work and to approve employees coming in late and leaving early. However, the shop foreman testified that when the service manager was on vacation, he was told that the service advisor was running the shop and he should help her in any way he could. The service manager gave the service advisor the keys to the shop and the codes for the security system. The shop foreman does not have either of these. The shop foreman also testified that service technicians ask the service manager when they want to leave work early or come in late. On occasion, in the service manager's absence, service technicians have told the shop foreman that they are going to go home because they have no work to do. The shop foreman sent them to their service advisors because they are the ones who control the workflow and assign the work to the service technicians. The shop foreman has no authority to assign work. On one occasion, the shop foreman assigned a technician to work on a car that had been returned a third time for repairs. The service advisor complained to the service manager who told the shop foreman not to assign work.

The service manager shows the shop foreman resumes received from applicants for service technician positions. The shop foreman reviews the resumes and gives his opinion as to the training and work history reflected therein. The service manager testified that he values this input; that if the shop foreman states he would not hire a person based on the resume, the

service manager usually follows that recommendation and does not interview. The shop foreman has not participated in any interviews. The service manager also told the shop foreman that he thought a technician should be terminated because of attendance problems. The shop foreman agreed. The technician was fired.

The shop foreman is paid a salary plus a bonus. The salary appears to be comparable to the wages the service technicians earn. The record does not indicate what factors trigger a bonus payment or how much the bonus is. The shop foreman does not receive overtime pay, nor do the service technicians. The shop foreman receives the same benefits as other service department employees, is subject to the same personnel policies, and wears the same uniform that the service technicians wear.

ANALYSIS

On this record, I find the evidence insufficient to establish the supervisory status of the shop foreman. It is well settled that the burden of proving supervisory status rests on the party asserting that such status exists. *Ohio Masonic Home*, 295 NLRB 390 (1989). Any lack of evidence in the record is construed against the party asserting supervisory status. *Elmhurst Extended Care Facilities, Inc.*, 329 NLRB 535, 536 fn. 8 (1999). To be classified as a supervisor, the individual in question must be acting in the interest of the employer, have authority to accomplish one of the enumerated functions listed in Section 2(11), and use independent judgment. *NLRB v. Health Care & Retirement Corp. of America*, 511 U.S. 571, 573-574, 114 S.Ct. 1178 (1994). Mere inferences or conclusionary statements without detailed, specific evidence of independent judgment are insufficient to establish supervisory status under Section 2(11). *Sears, Roebuck & Co.*, 305 NLRB 193 (1991). The Board frequently warns against construing supervisory status too broadly because an employee deemed a supervisor loses the protection of the Act. *Vencor Hospital-Los Angeles*, 328 NLRB 1136, 1138 (1999); *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997).

The Employer does not contend that the shop foreman has the authority to transfer, lay off, recall, promote, or reward employees, or to adjust their grievances. The Employer does contend, inter alia, that the shop foreman has the authority to suspend, discharge, and discipline employees. The only evidence offered in support of this authority are the statements of the general manager and the service manager that the shop foreman has this authority. Moreover, the shop foreman denies knowledge of this authority and has never exercised this authority. In fact, on the one occasion that the shop foreman suggested that an employee be disciplined, his suggestion was not followed. Thus, these conclusionary statements of the general manager and service manager, in the absence of specific evidence to support them, are insufficient to establish supervisory status. *Franklin Home Health Agency*, 337 NLRB No. 132, slip op. at 4 (2002). As these statements are contradicted by the testimony of the shop foreman as well as by specific evidence, the Board will not find that supervisory status is established

based upon such evidence. *Phelps Community Medical Center*, 295 NLRB 486, 490 (1989), cited in *North Shore Weeklies, Inc.*, 317 NLRB 1128, 1130 (1995). Moreover, the lack of specific evidence is construed against the party asserting supervisory status. *Michigan Masonic Home*, 332 NLRB No. 150, slip op. at 1 (2000).

Although the Employer contends that the shop foreman has the authority to recommend the hiring and firing of service technicians, the evidence falls far short of establishing effective recommendation as required by the Act. The authority effectively to recommend generally means that the recommended action is taken with no independent investigation by superiors, not simply that the recommendation is ultimately followed. *Training School at Vineland*, 332 NLRB No. 152, slip op. at 5 (2000). Here, the service manager is merely soliciting the shop foreman's opinion based on the same information the service manager has, i.e. the resumes or the service manager's representations of the attendance problem. Evaluating resumes against the Employer's requirements for a position does not involve significant independent judgment.

The Employer also contends that the shop foreman has the authority to assign work to the service technicians. The evidence establishes that the service advisors assign work to the service technicians and that the shop foreman has specifically been informed not to assign work. The shop foreman does not have the authority to send employees home when there is no work. That is clearly the province of the service manager or the service advisors. Moreover, the evidence only establishes that the service technicians at times request to leave early when there is no work, presumably because they do not get paid under a flat-rate system when they are not performing work.

The evidence also fails to establish that the shop foreman has the authority to responsibly direct the work of the service technicians. Although the Employer contends that the employees have been instructed to follow the directives of the shop foreman, the Employer has failed to establish that the direction is "responsible direction" which requires that the Employer establish that the alleged supervisor is held fully accountable and responsible for the performance and work product of the employee he directs. *Franklin Home Health Agency*, 337

NLRB No. 132, slip op. at 6 (2002). The Employer has presented no evidence that the shop supervisor is responsible or held accountable for the performance of the service technicians. Rather, the evidence indicates otherwise. For example, it is the service advisor, not the shop supervisor, who is responsible for the shop in the absence of the service manager. Moreover, the Employer has failed to establish that the shop supervisor exercises independent judgment in the direction of the work. The statements by the service manager that the shop supervisor is his “right hand man to make sure to keep the shop going” and that he “oversees the shop” are mere conclusions that cannot be relied upon to sustain the Employer’s burden. *Franklin Home Health Agency*, supra. The Employer presented no specific evidence of any directions given by the shop foreman, except on the one occasion that he instructed an employee to do a compression test and another occasion when he directed an employee to move a vehicle. The Employer has failed to establish that these directions or any other directions given require the exercise of independent judgment. Independent judgment cannot be simply inferred from the record. *Sears, Roebuck & Co.*, supra. It is just as likely that the shop foreman collaborates with the service technicians in resolving technical problems rather than directing them. The lack of specific evidence must be construed against the party asserting supervisory status. *Michigan Masonic Home*, supra. Although the Employer did establish that the shop foreman must sign the work orders approving certain warranty work, no evidence was presented that the shop foreman ever refuses to sign the work orders or that the approval process is other than a routine, clerical task. *Bozeman Deaconess Hospital*, 322 NLRB 1107, 1114 (1997); *John N. Hansen Co., Inc.*, 293 NLRB 63, 64 (1989).

Accordingly, I conclude that the Employer has failed to meet its burden that the shop foreman is a supervisor. As the shop foreman is a certified mechanic; spends 80 percent of his time assisting the service technicians in the performance of their skilled mechanical work; and shares the same supervision and department, I shall include the shop foreman in the unit.

IV. CONCLUSIONS AND FINDINGS

Based upon the entire record in this matter and in accordance with the discussion above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time service technicians including the shop foreman and the lube, and oil technician employed by the Employer in the service department at its Ellisville, Missouri facility, EXCLUDING office clerical and professional employees, guards and supervisors as defined in the Act, and all other employees.

V. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees in this unit will vote on whether or not they wish to be represented for purposes of collective bargaining by: International Association of Machinists and Aerospace Workers, AFL-CIO.

A. VOTING ELIGIBILITY

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately prior to the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not

been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Those in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are: (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. EMPLOYER TO SUBMIT LIST OF ELIGIBLE VOTERS

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used in communication with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Co.*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that an eligibility list containing the full names and addresses of all the eligible voters must be filed by the Employer with the Regional Director for Region 14 within 7 days of the date of this Decision and Direction of Election. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the 14th Region, 1222 Spruce Street, Room 8.302, St. Louis, MO 63103 on or before **April 23, 2003**. No extension of time to file the list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be

submitted by facsimile transmission at (314) 539-7794. Since the list will be made available to all parties to the election, please furnish a total of two copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

C. NOTICE OF POSTING OBLIGATIONS

According to Section 103.20 of the Board's Rules and Regulations, the Employer shall post the Notices of Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

V. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, N.W., Washington, D.C., 20570-0001. The Board in Washington must receive this request by **April 30, 2003**. The request may not be filed by facsimile.

Dated November 12, 2003
at Saint Louis, Missouri

Ralph R. Tremain, Regional Director
National Labor Relations Board, Region 14

177-8560-1500
177-8580-5500
440-1760-9100
440-1760-9167-0233